Amran bin Ab Rahman & Ors v Dato' Hj Ikmal Hisham bin Abdul Aziz & Ors (No 2)

HIGH COURT (KUALA LUMPUR) — SUIT NO 22NCVC-191–02 OF 2013
LEE HENG CHEONG JC
15 AUGUST 2013

Civil Procedure — Locus standi — Action against society — Former secretary of UMNO stripped of membership — Declaration that organisation was illegal — Claim for damages — Whether there was locus standi to institute action — Threshold requirement of locus standi — Whether fulfilled — Whether there was cause of action — Rules of Court 2012

The first plaintiff, a former Secretary of the Tanah Merah Division of UMNO, was stripped of his membership from UMNO on 10 February 2010. The second and third plaintiffs were members of UMNO. The first defendant was the Ketua Bahagian of the UMNO Tanah Merah Division since 2009 whilst the second defendant was the Public Officer of UMNO. The third defendant was the Registrar of Societies of Malaysia. The plaintiffs sought a declaration that UMNO Tanah Merah Division was an illegal organisation and consequently, the first defendant could not hold the post as Ketua Bahagian UMNO Tanah Merah; damages against the first and second defendants in the sum of RM205,285,504. Enclosures 5 and 13 were filed by the first and second defendants while and encl 9 was an application by the third defendant to strike out the plaintiffs' writ of summons dated 21 March 2013 and statement of claim dated 21 March 2013 under O 18 r 19(1) of the Rules of Court 2012 ('ROC'). The first and second defendants argued that the plaintiffs have no cause of action and locus standi against the third defendant and that s 9 of the Societies Act 1966 also applied as the plaintiffs failed to state the capacity under which the second defendant was being sued.

Held, striking out the plaintiffs' suit with costs:

(1) Arising from the first plaintiffs' admission that he had terminated his membership in UMNO since 10 February 2013, the first plaintiff lacked locus standi since he was no longer a member of UMNO at the time this suit was instituted. As regards the locus standi of the second and third plaintiffs, they were caught by article 20.7 of the UMNO Constitution. The second and third plaintiffs' action in filing this suit, would result in their membership in UMNO, being automatically terminated. Since their membership in UMNO have been terminated, they thus lacked the locus standi to maintain this action (see paras 11–12).

(2) The plaintiffs' contentions that the first and second defendants' failure to hold an annual general meeting; failure to establish the relevant branches within three months; and matters relating to certificates of approval were all matters pertaining to the decisions and internal management of UMNO Tanah Merah Division (see para 16).

(3) They are conclusive evidence that the branches of UMNO Tanah Merah Division are duly registered pursuant to s 9 of the Act. In any event, the plaintiffs did not adduce any credible evidence to show otherwise. The plaintiffs had no reasonable cause of action against all the defendants. Even if the branches of UMNO Tanah Merah Division were unlawful as contended by the plaintiffs, the plaintiffs had no locus standi to seek a declaration that the branches of UMNO Tanah Merah Division were unlawful. Only the Minister concerned under s 5 of the Act and the third defendant could declare any society or branches, unlawful (see paras 19–21).

(4) The suit filed against the first and second defendants was frivolous, vexatious, disclosed no reasonable cause of action and an abuse of the process of the court, with costs. The court granted orders in terms of encll 5 and 13 respectively and the plaintiffs' suit was struck out with costs (see para 22).

[Bahasa Malaysia summary

Plaintif pertama, bekas Setiausaha UMNO Daerah Tanah Merah, dilucutkan daripada keahliannya daripada UMNO pada 10 Februari 2010. Plaintif-plaintif kedua dan ketiga adalah ahli-ahli UMNO. Defendan pertama adalah Ketua Bahagian UMNO Daerah Tanah Merah Division semenjak 2009 sementara defendan kedua adalah Pegawai Awam UMNO. Defendan ketiga adalah Pendaftar Persatuan Malaysia. Plaintif-plaintif memohon perisytiharan bahawa UMNO Daerah Tanah Merah adalah pertubuhan haram dan akibatnya, defendan pertama tidak dapat memegang jawatan tersebut sebagai Ketua Bahagian UMNO Tanah Merah; ganti rugi terhadap defendan pertama dan kedua dalam jumlah RM205,285,504. Lampiran-lampiran 5 dan 13 difailkan oleh defendan pertama dan kedua sementara lampiran 9 adalah permohonan oleh defendan ketiga untuk membatalkan writ saman plaintif bertarikh 21 Mac 2013 dan pernyataan tuntutan bertarikh 21 Mac 2013 di bawah A 18 k 19(1) Kaedah-Kaedah Mahkamah 2012 ('KKM'). Defendan-defendan pertama dan kedua berhujah bahawa plaintif-plaintif tidak mempunyai kausa tindakan dan locus standi terhadap defendan ketiga dan bahawa s 9 Akta Pertubuhan 1966 juga digunapakai memanadangkan plaintif-plaintif gagal untuk menyatakan kapasiti di bawah mana defendan kedua disaman.

Diputuskan, membatalkan tindakan plaintif dengan kos:

(1) Berbangkit daripada pengakuan plaintif pertama bahawa dia telah menamatkan keahliannya dalam UMNO semenjak 10 Februari 2013, plaintif pertama tidak mempunyai locus standi memandangkan dia bukan lagi ahli UMNO pada masa tindakan ini dimulakan. Berkaitan locus standi plaintif-plaintif kedua dan ketiga, mereka adalah terangkum di bawah artikel 20.7 Perlembagaan UMNO. Tindakan plaintif-plaintif kedua dan ketiga dalam memfailkan tindakan ini, akan mengakibatkan keahlian mereka dalam UMNO ditamatkan, mereka oleh itu tidak mempunyai locus standi untuk mengekalkan tindakan ini (lihat perenggan 11–12).

(2) Hujahan plaintif-plaintif bahawa kegagalan defendan-defendan pertama dan kedua untuk mengadakan Mesyuarat Agung Tahunan; kegagalan untuk membuktikan cawangan-cawangan relevan dalam masa tiga bulan; dan perkara berkaitan sijil-sijil kelulusan adalah kesemua perkara berkaitan keputusan dan pengurusan dalaman UMNO Daerah Tanah Merah (lihat perenggan 16).

(3) Ia adalah keterangan yang konklusif bahawa cawangan-cawangan UMNO Daerah Tanah Merah didaftarkan berikutan s 9 Akta. Walau bagaimanapun, plaintif-plaintif tidak mengemukakan apa-apa keterangan yang boleh dipercayai untuk menunjukkan sebaliknya. Plaintif-plaintif tidak mempunyai kausa tindakan yang munasabah terhadap kesemua defendan. Walaupun cawangan-cawangan UMNO Daerah Tanah Merah adalah tak sah seperti yang dihujahkan oleh plaintif-plaintif, plaintif-plaintif tidak mempunyai locus standi untuk memohon perisytiharan bahawa cawangan-cawangan UMNO Daerah Tanah Merah adalah tak sah. Hanya Menteri yang berkenaan di bawah s 5 Akta dan defendan ketiga boleh mengisytiharkan mana-mana persatuan atau cawangan, tak sah (lihat perenggan 19–21).

(4) Tindakan yang difailkan terhadap defendan-defendan pertama dan kedua adalah remeh dan menyusahkan, tidak mendedahkan kausa tindakan yang munasabah dan penyalahgunaan proses mahkamah, dengan kos. Mahkamah memberikan perintah dalam terma lampiran-lampiran 5 dan 13 masing-masing dan tindakan plaintif dibatalkan dengan kos (lihat perenggan 22).]

Cases referred to

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36, SC (refd)

Government of Malaysia v Lim Kit Siang; United Engineers (M) Berhad v Lim Kit Siang [1988] 2 MLJ 12, SC (folld)

Pendaftar Pertubuhan Malaysia v PV Das (bagi pihak People's Progressive Party of Malaysia (PPP)) (Datuk M Kayveas, intervener) [2003] 3 MLJ 449; [2003] 3 CLJ, CA (folld)
Sim Kie Chon v Superintendent of Pudu Prison & Ors [1985] 2 MLJ 385, SC (refd)
Tan Sri Hj Othman Saat v Mohamed bin Ismail [1982] 2 MLJ 177, FC (folld)

Legislation referred to

Election Offences Act 1954 s 33(4)
Extradition Act 1992 s 41
Rules of Court 2012 O 18 r 19(1)
Societies Act 1966 ss 5, 9, 12, 12(3), (6), (7), 18C

Wan Hidayat (Fadiah Fikri with him) (Kesavan) for the plaintiff.
Fahmi bin Adilah (Choo Shi Jin with him) (Hafarizam Wan & Aisha Mubarak) for the first and second defendants.
Nurul Farhana Khalid (Senior Federal Counsel) for the third defendant.

Lee Heng Cheong JC:

ENCLOSURES 5 AND 13

INTRODUCTION

[1] The first plaintiff was the former Secretary of the Tanah Merah Division of the United Malay National Organisation ('UMNO') and was stripped of his membership from UMNO on 10 February 2010.

[2] The second and third plaintiffs were members of UMNO.

[3] The first defendant is the *Ketua Bahagian* of the UMNO Tanah Merah Division since 2009 whilst the second defendant is the Public Officer of UMNO with an address at Tingkat 38, Menara Dato' Onn, Jalan Tun Ismail, 50480 Kuala Lumpur.

[4] The third defendant is the Registrar of Societies of Malaysia with an address at Jabatan Pendaftaran Pertubuhan Malaysia, Kementerian dalam Negeri, Aras 2 dan 3, Blok B, Bangunan Utama, chancery Place, Jalan diplomatic 2, Presint Diplomatik, 62542, Putrajaya.

THE PLAINTIFFS' CLAIMS

[5] In this suit, the plaintiffs sought the following reliefs:

A (a) *Deklarasi bahawa UMNO Bahagian Tanah Merah adalah pertubuhan haram*;

(b) *Akibatnya defendan pertama tidak boleh memegang jawatan sebagai Ketua Bahagian UMNO Tanah Merah Kelantan;*

B (c) *Defendan ketiga mengambil tindakan di bawah peruntukkan-peruntukkan berkenaan di bawah Akta Pertubuhan 1966 terhadap UMNO Bahagian Tanah Merah, Kelantan;*

(d) *Defendan pertama dan kedua membayar gantirugi khas sebanyak RM205,285,504 atau sebagaimana yang ditentukan oleh mahkamah yang*
C *mulia ini;*

(e) *Kos-kos bagi tindakan ini; dan;*

(f) *Relief-relief lanjut atau yang lain yang mahkamah yang mulia ini menyifatkan sesuai dan patut diberikan*.
D

[6] Enclosures 5 and 13 are applications filed by the first and second whilst encl 9 is filed by the third defendant herein, to strike out the plaintiff's writ of summons dated 21 March 2013 and statement of claim dated 21 March 2013
E under O 18 r 19(1) of the Rules of Court 2012. All enclosures are heard together. The third defendant is proceeding under O 18 r 19(1)(a), (b) or (d) of the Rules of Court 2012 whilst the first and second defendants are proceeding under O 18 r 19(1)(a), (b), (c) or (d) of the Rules of Court 2012 on the following grounds:

F (a) That the plaintiffs have no locus standi to bring this suit against the defendants as the first plaintiff admitted that he had terminated his membership in UMNO since 10 February 2010. As regards the second and third plaintiffs, by virtue of article 20.7 of the UMNO Constitution, they automatically lost their membership in UMNO, by
G their act of filing this action in court and further the second and third plaintiffs officially terminated their membership on UMNO on 13 March 2012 via their letters bearing the same date (refer to Exhs 'DARY-2' and 'DARY-3');

H (b) That s 18C of the Societies Act 1966 applies to this case;

(c) That the plaintiffs have no reasonable cause of action against the first and second defendants; and

(d) That s 9 of the Societies Act also applies as the plaintiffs failed to state the
I capacity under which the second defendant is being sued.

THE LAW ON STRIKING OUT UNDER O 18 R 19(1) OF THE RULES OF COURT 2012 ('ROC 2012')

[7] In the Supreme Court case of *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36, Mohamed Dzaidin bin Hj Abdullah SCJ (as he then was) held as follows:

> The principles upon which the court acts in exercising its power under any of the four limbs of O18 r 19(1) of the RHC are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule (per Lindley MR in *Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark Ltd 7*, and this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable' (see *AG of Duchy of Lancaster v L & NW Rly Co 8*). It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence (see *Wenlock v Moloney & Ors 9*). The court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable.

[8] Further in the Supreme Court case of *Sim Kie Chon v Superintendent of Pudu Prison & Ors* [1985] 2 MLJ 385, Abdul Hamid Omar CJ, at p 386, held as follows:

> The principle governing the striking out of pleadings is clear in that it is only in plain and obvious cases that recourse should be had to the summary process under O 18 r 19 of the Rules of the High Court 1980: 'the summary procedure under this Rule can only be adopted when it can clearly be seen that a claim or answer is on the face of it 'obviously unsustainable'.' (*Attorney-General of Duchy of Lancaster v L & NW Railway Co)* [1892] 3 Ch 274. (Supreme Court Practice 1985).

CONSIDERATION OF THE APPLICATION (ENCLOSURES 5 AND 13)

[9] The plaintiffs contended, inter alia, that on the UMNO Tanah Merah Division is an unlawful society pursuant to s 12(3) of the Societies Act 1966 as the second defendant, being the Public Officer of UMNO has failed to ensure that UMNO Tanah Merah Division complies with all statutory requirements of the Societies Act 1966 and that s 12(6) and (7) of the said Act is mandatory.

[10] Having read and considered all the relevant pleadings and submission of learned counsel for the defendants and the plaintiffs, this court finds that there are merits in the first and second defendants' application (encls 5 and 13) on the following grounds.

A LOCUS STANDI

[11] On the issue of the first plaintiff's locus standi, this court finds that arising from the first plaintiff's admission that he had terminated his membership in UMNO since 10 February 2013, the first plaintiff thus lacks B locus standi since he was no longer a member of UMNO at the time this suit was instituted. As regards the locus standi of the second and third plaintiffs, they are caught by article 20.7 of the UMNO Constitution which states as follows:

C > Seseorang ahli yang membawa apa-apa atau hak keahliannya ke Mahkamah sebelum mematuhi sepenuhnya peraturan-peraturan parti maka keahliannya di dalam parti gugur dengan sendirinya.

[12] Applying the above article 20.7 to this case, the second and third D plaintiffs' action in filing this suit, would result in their membership in UMNO, being automatically terminated. Since their membership in UMNO have been automatically terminated, they thus lacked the locus standi to maintain this action.

E **[13]** The test of standing in a proceeding for a declaration was restated in *Tan Sri Hj Othman Saat v Mohamed bin Ismail* [1982] 2 MLJ 177 where the Federal Court held:

> *Although it is not necessary for a plaintiff who seeks relief by way of declaratory judgment to show that he has a present cause of action, he must be somebody with such an interest* F *in the subject-matter of the action as to justify his seeking relief.*
>
> It cannot be doubted that the respondent had a legitimate grievance and there was a threat to his private right by the appellant. He certainly met the 'real interest' test to acquire a locus standi to seek for the said declarations. The High Court too was aware of this limitation when it stated that 'declaratory relief would be refused to* G *spectators, speculators and busybodies'. (Emphasis added.)

[14] In *Government of Malaysia v Lim Kit Siang; United Engineers (M) Berhad v Lim Kit Siang* [1988] 2 MLJ 12, the court dealt with the question of 'locus H standi' of a private person seeking a declaration and an injuction for the enforcement of a public right purportedly for public interest. Abdul Hamid CJ (Malaya) speaking for the court said, inter alia, as follows:

> *This appeal raises an issue of considerable importance. The central issue revolves round the question of 'locus standi' of a private person seeking a declaration and an injunction* I *in a case for the enforcement of a public right purportedly for public interest.*
>
> ...

'Locus standi' is generally understood to mean the right of a party to appear and be heard by a tribunal. A litigant is said to have locus standi, in effect standing to sue in a court of law, if that court recognises his or her ability to institute and maintain proceedings before it. The question of standing is thus separate and distinct from questions of the substantive merits and the legal capacity of the plaintiff. It follows, therefore, that a litigant may lack standing to bring a case which would succeed if brought by the right litigant. Put in a nutshell, the law of standing to sue has two fundamental rules. First, apart from certain cases in which standing to sue is in the discretion of the court, the plaintiff must possess an interest in the issues raised in the proceedings. Second, where the private plaintiff relies on an interest in the enforcement of a public right and not of a private right, standing will be denied unless the Attorney-General consents to a relator action, or the plaintiff can demonstrate some special interest beyond that possessed by the public generally. (Emphasis added.)

[15] Applying the principles enunciated in the above cases, it is clear that the plaintiffs must establish the threshold requirement of locus standi to maintain this action and this court finds that the three plaintiffs lacked the requisite locus standi.

SECTION 18C OF THE SOCIETIES ACT 1966

[16] This court finds that the plaintiffs' contentions that the first and second defendants' failure to hold an annual general meeting, failure to establish the relevant branches within three months and matters relating to certificates of approval are all matters pertaining to the decisions and internal management of UMNO Tanah Merah Division. As such, s 18C of the Societies Act 1966 applies. Section 18C of the Societies Act 1966 states as follows:

The decision of a political party or any person authorised by it or by its constitution or rules or regulations made thereunder on the interpretation of its constitution, rules or regulations or on any matter relating to the affairs of the party shall be final and conclusive and such decision shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground, and no court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision.

[17] This court is guided by the case of *Pendaftar Pertubuhan Malaysia v PV Das (bagi pihak People's Progressive Party of Malaysia (PPP)) (Datuk M Kayveas, intervener)* [2003] 3 MLJ 449; [2003] 3 CLJ where the court held, inter alia, as follows:

A The first thing to be observed is that this section applies only to political parties. Secondly the words used are more exhaustive than those used in other similar provisions. For example, in s 33(4) of the Election Offences Act 1954, the words 'shall be final' are used. In s 41 of the same Act, the words 'shall be final and conclusive' are used. In s 41 of the Extradition Act 1992 the words 'shall be final and conclusive and shall not be challenged, appeal against, reviewed, quashed or called in question in any court' are used. This section was inserted by Act A484 and came into force on 30 May, 1980.

B

[18] Thus this court finds that it has no jurisdiction to entertain or determine such claim of the plaintiffs.

C

NO REASONABLE CAUSE OF ACTION

[19] The plaintiffs' contention is, inter alia, that they are entitled to a declaration that the UMNO Tanah Merah Division and its branches are illegal as they were not registered pursuant to s 12 of the Soceities Act 1966. The first and second defendant's contention however is that the UMNO Tanah Merah Division has complied with all the statutory requirements of the Societies Act 1966, in particular s 12. In further support, the first and second defendants relied on the relevant certificates of approval produced by the third defendant, to substantiate their claims. From the said certificates of approval, this court finds that they are conclusive evidence that the branches of UMNO Tanah Merah Division are duly registered pursuant to s 9 of the Societies Act 1966.

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F **[20]** In any event, the plaintiffs did not adduce any credible evidence to show otherwise. Thus this court finds that the plaintiffs have no reasonable cause of action against all the defendants herein.

G **[21]** Even if the branches of UMNO Tanah Merah Division are unlawful as contended by the plaintiffs, the plaintiffs has no locus standi to seek a declaration that the branches of UMNO Tanah Merah Division were unlawful, only the minister concerned under s 5 of the Societies Act 1966 and the third defendant can declare any society or branches, unlawful.

H ORDER

[22] In the light of the above, this court finds that the suit filed against the first and second defendants is frivolous, vexatious, discloses no reasonable cause of action and an abuse of the process of the court, with costs. In the previous, this court grant an orders in terms of encls 5 and 13 respectively and the plaintiffs' suit is struck out with costs.

I

Plaintiffs' suit struck out with costs.

Reported by Afiq Mohamad Noor